

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOHN FRANZ, as Owner of the 1996 Silverton 37
Motor Yacht Pleasure Vessel, for Exoneration
from or Limitation of Liability,

Movant,

-against-

WEST BANK MARINA AND YACHT CLUB,
Patchogue, New York,

Respondent.

CNA INSURANCE CO., as Subrogee of Edward
Shand,

Claimant.

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CNA INSURANCE CO., as Subrogee of Edward
Shand,

Third-Party Plaintiff,

-against-

JOHN FRANZ, JAMES DESIMON, JD MARINE
SERVICES, MICHAEL BRUEMMER d/b/a WEST
BANK MARINA AND YACHT CLUB and
JOSE TORRES,

Third-Party Defendants.

-----X
FEUERSTEIN, J.

ORDER
11-cv-6073(SJF)(AKT)

FILED
IN CLERK'S OFFICE
U S DISTRICT COURT E D N Y

★ JUL 23 2012 ★

LONG ISLAND OFFICE

Pending before the Court is the Report and Recommendation of Magistrate Judge A.
Kathleen Tomlinson ("the Report"), dated June 15, 2012, recommending, *inter alia*, that the
motion of Old United Casualty Company ("Old United"), as subrogee of the movant John Franz

("Franz"), owner of the 1996 Silverton 37 Motor Yacht Pleasure Vessel, to intervene in this action to commence suit against third-party defendants JD Marine Services ("JD Marine") and James DeSimon ("DeSimon") be granted pursuant to Rule 24(b) of the Federal Rules of Civil Procedure. No objections have been filed to the Report. For the reasons stated herein, the Report of Magistrate Judge Tomlinson is accepted in its entirety.

I

Although any portion of a report and recommendation on dispositive matters to which a timely objection has been made is reviewed *de novo*, see 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b), the court is not required to review the factual findings or legal conclusions of the magistrate judge as to which no proper objections are interposed. See, Thomas v. Arn, 474 U.S. 140, 150, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985). To accept the report and recommendation of a magistrate judge to which no timely objection has been made, the district judge need only be satisfied that there is no clear error apparent on the face of the record. See Fed. R. Civ. P. 72(b); Johnson v. Goord, 487 F.Supp.2d 377, 379 (S.D.N.Y. 2007), aff'd, 305 Fed. Appx. 815 (2d Cir. Jan. 1, 2009); Baptichon v. Nevada State Bank, 304 F.Supp.2d 451, 453 (E.D.N.Y. 2004), aff'd, 125 Fed.Appx. 374 (2d Cir. 2005). Whether or not proper objections have been filed, the district judge may, after review, accept, reject, or modify any of the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b).

II

No party has filed any objections to Magistrate Judge Tomlinson's Report. Upon review,

the Court is satisfied that the Report is not facially erroneous. Accordingly, the Court accepts Magistrate Judge Tomlinson's Report in its entirety. For the reasons set forth in the Report, Old United's motion to intervene is granted to the extent that Old United is permitted to intervene in this action on a permissive basis pursuant to Rule 24(b) of the Federal Rules of Civil Procedure to commence suit against JD Marine and DeSimon, **provided that Old United serves and files its intervenor complaint on or before August 13, 2012.** A failure to file the intervenor complaint on or before August 13, 2012 will be deemed a waiver of Old United's right to intervene in this action.

SO ORDERED.

s/ Sandra J. Feuerstein

SANDRA J. FEUERSTEIN
United States District Judge

Dated: July 23, 2012
Central Islip, New York